

The Usefulness of the Law in Obtaining Union Democracy

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How EFFECTIVE can the law be in protecting the union members' basic democratic rights of participation, due process, accountability, and equal protection? The law at present gives only halting protection to these rights. Legal relief comes erratically, giving too little, too late, and costing too much. This compels a closer scrutiny of these weaknesses to determine whether they are inherent or subject to correction.

Legal Protection of Members' Rights

The first and most critical weakness is that open recognition of these rights is blocked by threadbare legal doctrines which equate labor unions with sewing circles. Union members, it is mechanically repeated, have only those rights provided by the union constitution; and constitutional clauses which prohibit distribution of circulars, organizing groups within the union, and creating dissension or causing disruption, are notoriously common. Few courts frankly repudiate oppressive use of these clauses, but use elastic contract logic to covertly protect individual rights. The veil of doctrine and legal logic conceals the results. Democracy draws little strength from such deviousness, for the myth that a union is a voluntary association is perpetuated in the minds of union members and leaders, and even in the minds of unperceptive lawyers and judges.

The law need not be so obtuse. These basic democratic rights are capable of explicit recognition and statement as legal principles. They are the rights of a union member as a citizen in his industrial government and can be broadly stated as a bill of rights for union members. Like any bill of rights, they are not self-defining absolutes but are qualified by the union's right to survive. Their application to specific fact situations is exceedingly difficult, and the wavering boundary lines must be pricked out case by case. Simplicity and certainty cannot be achieved, but explicit declaration of these rights will clear away clouds of doubt and confusion. Problems can be faced squarely and legal remedies made more effective.

The second major weakness of the law is its delay. The main stumbling block is the well-thumbed rule that courts will not intervene until all appeals within the union are exhausted. This rule is solidly based, for unions should have first opportunity and responsibility to correct their mistakes. However, the protracted process of appealing through the hierarchy of officials, ending with the union convention, may take years. Dissenters will have been silenced, opposition groups disintegrated, corruptly elected officials entrenched in power, and union treasuries plundered. The judges, inwardly aware of the dangers of such delay, have created multiple exceptions which allow easy circumvention whenever necessary. However, constant repetition of the rule discourages the union member, misleads the lawyers, and frequently trips the harried judge who does not see the paths of avoidance.

This barrier need not be so high or so deceptive. Two changes in the law could enable it to fulfill its constructive purpose and reduce its destructive consequences. A simple statutory rule could require exhaustion of all appeals available within the union in a short period of time, perhaps 6 months. Unions thus could correct themselves and would be encouraged to provide prompt internal appeals. In addition, the law could, in appropriate cases, protect the rights of members by giving interim relief until those appeals were exhausted. Such measures would not only protect against the dangers of delay but would also reduce if not eliminate the need for debilitating exceptions.

The third weakness of legal remedies is the high cost of litigation. A simple expulsion case may cost several thousand dollars in transcripts, printing charges, and lawyers' fees. The very prospect of such financial burdens discourages members from asserting their rights, and lawyers are reluctant to take such cases knowing that they will receive little or no pay. Those in power, with the whole union treasury to draw on, can extend litigation and multiply legal costs until those who protest are financially crushed.

Two devices could be used to give some help. When individuals are forced to seek legal protection for democratic rights, they might well be considered as protecting rights belonging to all

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members equally. If their claims are upheld, they should be entitled to full repayment of all legal costs incurred in protecting these rights. This is no more than minority stockholders or beneficiaries of trusts are now given when they assert rights held in common. The other method is to place enforcement of democratic rights in an administrative agency which then carries the burden of investigation and prosecution. This would give to the rights of union citizenship the same aid as has been given to the right to join unions for 20 years under the National Labor Relations Act.

None of these three weaknesses which now hobble the courts in protecting democratic rights is wholly incurable. Significant strengthening could be gained by relatively simple changes. The inquiry, however, cannot end here, for the goal is not legal victories or judicial proclamations but more effective democratic rights. These rights, particularly in the one-party system characteristic of unions, are primarily instruments of protest. The ultimate test is whether the law helps or hinders dissenters in making effective protest against existing policies or established leaders.

Encouraging Democratic Institutional Practices

Using the law to strengthen the working elements of active self-government, which make union democracy a practicing reality, poses much more difficult problems. These elements cannot be framed as legal commands, for they grow out of institutional structures and mechanisms within the union organization. The law cannot decree that the union create open channels of communications, provide leadership training, or eliminate its monolithic bureaucracy. These must be achieved, if at all, by indirection. Furthermore, these working elements are the sum total of an intricate network of devices and practices which may exist in an infinite variety of combinations.

The most stubborn problem is the oligarchic structure which provides those in power with a

powerful political machine composed of subordinate officers, staff members, and field representatives, none of whom dare to question established policies or entrenched leadership. Legal recognition of the right of union employees to organize might possibly provide political independence to these secondary leaders. Instead of dutifully echoing the official line, they might stimulate debate on critical issues, provide channels of communication, and give leadership to a more vital functioning democracy.

The law can potentially strengthen the focal point of union democracy by protecting local unions from total domination by the international union. The law cannot decree local autonomy, for centralized power, particularly in collective bargaining, is largely compelled by economic necessity.

Conclusion

The primary responsibility for strengthening union democracy lies not on the law but on the labor movement. On union leaders rests the duty to develop the institutional mechanisms and practices which can give life and meaning to the forms of democracy. On union members rests the obligation to assert their rights of citizenship and to exercise their instruments of self-government. The law ought not remove from the labor movement its responsibility to keep its own house in order but should only reinforce the efforts of those forces within who work to achieve these⁴ ideals.

The law could not decree union democracy, for apathetic members cannot be compelled to action, nor can indifference be transformed to interest. The most that the law can do is to safeguard the basic rights essential for the life of union democracy, and to contribute where possible to encouraging those institutions which give it vitality. The law has fallen far short of this limited goal primarily because it has not explicitly recognized it as a goal.